

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

APRIL 7, 2014

A meeting of the Louisville Metro Board of Zoning Adjustment was held at 8:30 a.m. on Monday, April 7, 2014, at the Metro Development Center, 444 S. 5th Street, Conference Room 101, Louisville, Kentucky.

Members present were:

David Proffitt, Chair
Mike Allendorf, Vice Chair
Rosalind Fishman, Secretary
Frederick Liggin
Dean Tharp

Members absent:

Betty Jarboe

Staff members present were:

Emily Liu, Director of Planning & Design Services
Jon Baker, Legal Counsel
Jessica Wethington, Public Information Specialist
Steve Hendrix, Planning Supervisor
Jon Crumble, Planner II
Latondra Yates, Planner II
David Wagner, Planner II
Matthew Doyle, Planner I
Jessica Butler, Planner I
Sherie Long, Landscape Architect
Lee Wells, Planning Technician
Beth Stevenson, Management Assistant

The following cases were heard:

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APPROVAL OF MINUTES:

Minutes of the meeting held on March 17, 2014

On a motion by Member Fishman, seconded by Member Tharp that the minutes of the meeting conducted on March 17, 2014 were approved.

The vote was as follows:

YES: Members Liggin, Tharp, Fishman and Proffitt.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Jarboe.

ABSTAINING: Member Allendorf.

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BUSINESS SESSION:

NON-HEARING VARIANCE

CASE NO. 14VARIANCE1021

Applicant/Owner: Fredrick Ryan & Elizabeth Ann Keith
2543 Wood Creek Road
Louisville, Kentucky 40205

Representative: Milestone Design Group
John M. Thomas
108 Daventry Lane
Louisville, Kentucky 40223

Subject: An application for a variance from the Land Development Code to allow a proposed addition to the principal structure to encroach into the side yard setback.

Premises affected: On property known as 2543 Wood Creek Road and being in Seneca Gardens.

COUNCIL DISTRICT 8—Tom Owen

Staff Case Manager: Regina Thomas, Associate Planner

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning and Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

On April 7, 2014, at a meeting of the Board, this case was presented to the Board in open business session pursuant to KRS 100.241 and KRS 100.243. A drawing showing the premises affected and the existing structure was presented to each Board member.

On a motion by Board Member Fishman, seconded by Member Tharp, the following resolution was adopted:

WHEREAS, the Board finds based on the staff report and plan that the applicant requests a variance to allow a proposed addition to the principal structure to encroach 1.9 feet into northeast side yard setback (addition will be 3.1 feet from the northeast property line at its closest point; and

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WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the home addition will only encroach less than 2 feet from the northeast property line; and because the home will remain approximately 12 feet away from the adjacent property owner and will not have windows for fire safety and privacy concerns; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the home addition is compatible with the existing home and other homes in the neighborhood, specifically, front-facing 2-car garages also including a master bedroom on the 2nd floor; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the home addition described consists solely of private interior space; and the addition will be 12 feet from the adjacent structure along the northeast property line; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because it will allow the replacement of a 1 car garage with a new 2 car garage on the existing driveway; and because the addition is compatible with the original home design; and because the existing garage is not functional; and the request will still preserve most of the side yard setback; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because the variance will allow the construction of an attached two-car garage; and because there is less than 18 feet between the main home and the side yard boundary; and because the garage is designed to be 19.54 feet wide; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant being unable to construct a new two-car garage since the existing garage is not functional;

NOW, THEREFORE, BE IT RESOLVED, that the variance is hereby **APPROVED** to allow a proposed two-car garage to be 3.1 feet at its closest point from the northeast property line;

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BE IT FURTHER RESOLVED, that this action be effective immediately.

The vote was as follows:

YES: Members Proffitt, Fishman, Tharp, Allendorf and Liggin.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Jarboe.

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 13CUP1009

Applicant(s): Louisville Development Partners, LLC
Franklin Farrow
P.O. Box 813
Ooltewah, TN 37363

Owner(s): Laurel Spring Development, LLC
Gary W. Brown
728 S. 4th Street
Louisville, Kentucky 40202

Attorney: Wyatt, Tarrant & Combs, LLP
Deborah Bilitski, Esq.
500 W. Jefferson Street, Ste. 2800
Louisville, KY 40202

Representative: Land Design & Development, Inc.
Kevin Young, President
503 Washburn Avenue, Suite 100
Louisville, Kentucky 40222

Subject: An application for a Conditional Use Permit to allow a nursing home in an R-4 zoning district; and waivers to allow an easement overlap of more than 50%.

Premises affected: On property known as 4701 & 4711 S. Hurstbourne Parkway and being in Louisville Metro.

COUNCIL DISTRICT 22—Robin Engel
Staff Case Manager: Jon E. Crumbie, Planner II

Appearances for Applicant:
Deborah Bilitski, Attorney, 500 W. Jefferson Street, Ste. 2800, Louisville, Kentucky 40202.

Kevin Young, 503 Washburn Avenue, Suite 100, Louisville, KY 40222.

Frank Farrow, P.O. Box 813, Ooltewah, TN 37363.

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Appearances- Interested Parties:

No one.

Appearances Against Applicant:

No one.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning & Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

On March 24, 2014, Louisville Development Partners, LLC filed an application for a Conditional Use Permit to allow a nursing home in an R-4 zoning district; and waivers to allow an easement overlap of more than 50%.

On April 7, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The audio/visual recording of this hearing will be found on the DVD of the April 7, 2014 proceedings available in the Planning and Design Services Office.

SUMMARY OF STAFF PRESENTATION:

Staff case manager, Jon Crumbie, gave a brief presentation of the case to the Board, which included a PowerPoint presentation. He said the applicant is requesting a Conditional Use Permit for a nursing home; and that the waivers are needed to the rear for easement overlap. He said the property is vacant with residential uses to the north, east and west. Mr. Crumbie said the applicant is requesting a modification of Item 4 B, because the applicant is proposing two signs at the entrance along South Hurstbourne Parkway which will be 40 feet in area and 8 feet in height. He said he received a letter of opposition from several neighbors who are concerned about the new sewer line hook-up to an existing line running through their backyards. They said they are opposed because to build it will remove mature trees; disrupt wildlife; blasting concerns, property

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values etc. Chair Proffitt asked if MSD signed off on the development plan. Mr. Crumbie said yes.

SUMMARY OF TESTIMONY OF PROPONENTS:

Deborah Bilitski, the applicant's attorney, said she is happy to represent the applicant's stating that they have similar facilities in 5 other states and are new to Kentucky. She said there will be two buildings, one which will be independent living and the other for Alzheimer's patients.

Kevin Young explained the plan, stating that the site rises up along Hurstbourne Lane and are asking for the waivers to allow a dumpster pad and parking. He said they tried to move the building up as far as they could, but only had so much room with the existing sanitary sewer line. Mr. Young said they will still be providing landscaping. Mr. Young explained the sewer connection and said they are working out an equitable agreement with the neighbors.

Ms. Bilitski said the building will be one story like the existing residences. She said they will still be providing 25 ft. of Landscape Buffer Area. Mr. Young said there will be trees and shrubs and a fence along another portion.

Chair Proffitt asked if there will be any type of lighting between the building and the adjacent property owners.

Frank Farrow, the applicant, said there will be low level lighting in the back.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition.

BUSINESS SESSION:

Member Allendorf mention that the address has been reassigned to 4701 & 4711 S. Hurstbourne Parkway.

After the public hearing in open business session, on a motion by Member Allendorf, seconded by Member Fishman, the following resolution was adopted:

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WHEREAS, the Board finds, from the file of this case, the staff report, the PowerPoint presentation, the applicant's justification, the testimony and evidence submitted at the public hearing, that the applicant is requesting a Conditional Use Permit to allow a nursing home in an R-4 zoning district; and

WHEREAS, the Board finds that the property is within a Neighborhood Form District; and

WHEREAS, the Board finds that the proposed development will be consistent and compatible with the character of the area, because the Neighborhood Form District is characterized by predominantly residential uses that vary from low to high density and blend compatibly into the existing landscape and neighborhood areas; and because the Neighborhood Form District should contain diverse housing types in order to provide housing choices for differing ages and incomes, as well as provide for accessibility and connectivity between adjacent uses and incorporate low level lighting and adequate landscaping and buffering from adjoining property owners to the east; and because a 30-foot parkway buffer will be provided along South Hurstbourne Parkway and will include a 4-board horse fence and landscape plantings in accordance with the LDC requirements; and

WHEREAS, the Board finds that the proposal is compatible with the general character of the surrounding neighborhoods in terms of height, scale, intensity, lighting and appearance; and

WHEREAS, the Board finds that the proposal has the necessary public facilities (both on-site and off-site), such as transportation, sanitation, water, sewer drainage, emergency services, education, recreation etc. to adequately serve the use; and because the proposal has been reviewed by Public Works and MSD and both have approved the plan; and

WHEREAS, the Board finds that the proposal complies with 3 of the listed requirements for a nursing home with the exception of Item 4 (B) because the applicant is proposing two signs at the entrance along South Hurstbourne Parkway; where freestanding signs on designated parkways with more than 600 feet of frontage can have an area of 81 square feet and be 12 ft. in height; and because the board will modify this requirement to allow two sign being 40 feet in area and 8 feet in height; and

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WHEREAS, the Board finds the proposal to be in conformance with the Comprehensive Plan because it complies with all applicable guidelines, principles and objectives of the Comprehensive Plan, as it has received preliminary approval from Transportation Review and Louisville and Jefferson County Metropolitan Sewer District;

NOW, THEREFORE, BE IT RESOLVED, that the Conditional Use Permit is hereby **APPROVED ON CONDITION**.

The conditions are as follows:

1. The site shall be developed in strict compliance with the approved development plan (including all notes thereon). No further development shall occur on the site without prior review and approval by the Board.
2. The Conditional Use Permit shall be “exercised” as described in KRS 100.237 within two years of the Board’s vote on this case. If the Conditional Use Permit is not so exercised, the site shall not be used for a nursing home without further review and approval by the Board.

The vote was as follows:

YES: Members Proffitt, Fishman, Tharp, Allendorf and Liggin.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Jarboe.

ABSTAINING: No one.

WAIVERS—North and East Property Lines:

After the public hearing, in open business session, on a motion by Member Allendorf, seconded by Member Fishman, the following resolution was adopted:

WHEREAS, the Board finds, from the file of this case, the staff report, the PowerPoint presentation, the applicant’s justification, the testimony and evidence submitted at the public hearing, that the applicant is requesting waivers from the Land Development Code, Section 10.2.4.B, to allow a proposed sewer and

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drainage easement to encroach into the 25-foot landscape buffer area along the north and east property lines by more than 50%; and

WHEREAS, the Board finds that the requested waivers will not adversely affect adjacent property owners because the required 25-foot landscape buffer area is being provided along the north and east property lines and landscape plantings will be installed in accordance with the Land Development Code requirements; and

WHEREAS, the Board finds that the waivers will not violate specific guidelines of Cornerstone 2020 because Guideline 3, Policy 9 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate; and because Guideline 3, Policies 21 and 22 calls for appropriate transitions between uses that are substantially different in scale and intensity and density, and to mitigate the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust, dirt, litter, junk, outdoor storage, and visual nuisances; and because Guideline 3, Policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize the impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered; and because Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban and rural areas; and because the intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter air borne and water borne pollutants; and

WHEREAS, the Board finds that the extent of the waiver of the regulation from which relief is sought is the minimum necessary due to the location of the sewer and drainage easement which is mandated by MSD; and

WHEREAS, the Board finds that the applicant has incorporated other design features that exceed the minimums of the district and compensate for non-

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compliance of the requested regulation to be waived, including courtyards, large open space areas, low level lighting, residential building character and architectural design;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the waivers.

The waivers allow:

1. The easement overlap to be more than 50% along the north property line.
2. The easement overlap to be more than 50% along the east property line.

The vote was as follows:

YES: Members Proffitt, Fishman, Tharp, Allendorf and Liggin.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Jarboe.

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14VARIANCE1016

Applicant/Owner: MWA Investments, LLC
Samir Faraj
331 East Oak Street
Louisville, Kentucky 40203

Representative: Mike Evans
6625 Colonial Drive
Evansville, IN 47725

Project Name: East Oak Street Laundromat and Grocery

Subject: An application for a variance from the Land Development Code, Section 5.5.1.A.2, to allow a proposed building to exceed the maximum setback.

Premises affected: On property known as 331 East Oak Street and being in Louisville Metro.

COUNCIL DISTRICT 6—David James
Staff Case Manager: Matthew R. Doyle, Planner I

Chair Proffitt announced that the applicant is out of town and would like to continue the hearing to April 21, 2014.

On a Motion by Member Jarboe, seconded by Member Allendorf the following resolution was adopted:

RESOLVED, that the Board does hereby **CONTINUE** Case No. 14VARIANCE1016 to **APRIL 21, 2014**.

The vote was as follows:

YES: Members Proffitt, Fishman, Tharp, Allendorf and Liggin.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Jarboe.

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14VARIANCE1019

Applicant/Owner: Stor All Fairdale, LLC
Steve Womack
253 Womstead Drive
Grayson, Kentucky 41143

Attorney: Weber & Rose, PSC
Jim Lobb, Esq.
471 W. Main Street, Ste. 400
Louisville, Kentucky 40220

Representative: Power of Design
Mark Patterson
4500 Old LaGrange Road
Buckner, Kentucky 40010

Project Name: Stor All Fairdale

Subject: An application for a variance from the Land Development Code to allow proposed structures and pavement to encroach a maximum of 55 feet into the stream buffer.

Premises affected: On property known as 6300 Commerce Park Court and being in Louisville Metro.

COUNCIL DISTRICT 13—Vicki Aubrey Welch
Staff Case Manager: Matthew Doyle, Planner I

Appearances for Applicant:
James Lobb, Attorney, 471 W. Main Street, Ste. 400, Louisville, Kentucky 40220; who submitted photographs into the record.

Mark Patterson, 4500 Old LaGrange Road, Buckner, Kentucky 40010.

Appearances Interested Party:
No one.

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Appearances Against Applicant:

No one.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning and Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

On March 10, 2014, Stor All Fairdale, LLC filed an application for a variation from the requirements of the Land Development Code to allow proposed structures and pavement to encroach a maximum of 55 feet into the stream buffer area.

On April 7 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The recording of this hearing will be found on the DVD of the April 7, 2014 proceedings.

SUMMARY OF STAFF PRESENTATION:

Staff case manager, Matthew Doyle gave a brief presentation of the case to the Board, which included a PowerPoint presentation. He said the applicant is proposing a mini-warehouse development consisting of 8 buildings and an office. He said the existing site is vacant with an adjacent warehouse and hotel. He said the development is adjacent to a USGS perennial blue-line stream which was channelized since the general plan was approved in 1999. The Land Development Code requires a 100 ft. setback for a "Type B" stream buffer; and the proposed buildings would encroach no more than 55 feet into the buffer. He said the Detailed District Development Plan and binding element amendments were approved by the Development Review Committee on April 2, 2014.

SUMMARY OF TESTIMONY OF PROPONENTS:

James Lobb, attorney for the applicant, submitted photographs of the site into the record. He said the water doesn't flood and that the ditch backs up near the

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Gene Snyder Freeway. He said he hasn't heard any opposition. Chair Proffitt said the photographs submitted are not in the 100 year flood plain; and asked if he isn't concerned about possible flooding. Mr. Lobb said no, that there are other structures encroaching into the stream buffer that haven't flooded.

Mark Patterson, the applicant's other representative said the 100 year floodplain is at the top of the hill; and that the development will be built outside of it.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition.

BUSINESS SESSION:

Member Allendorf, who works for the Okolona Fire Department, said he feels the location of the buildings is satisfactory with regard to the floodplain.

After the public hearing in open business session, on a motion by Member Allendorf, seconded by Member Liggins, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Section 4.8.3.C of the Land Development Code to allow the proposed structures and pavement to encroach into a maximum of 55 feet into the stream buffer area; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare since MSD has approved the preliminary development plan and will ensure that the subject site meets the wastewater/stormwater discharge regulations for reduced stormwater based pollution from entering the stream; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity since the proposal is compatible with the development in the area; and

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WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public since MSD has approved the preliminary development plan and will ensure that the subject site meets the wastewater/stormwater discharge regulations for reduced stormwater based pollution from entering the stream; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since the proposed development meets or exceeds all other provisions of the Land Development Code, and MSD has approved the preliminary development plan and will ensure that the subject site meets the wastewater/stormwater discharge regulations for reduced stormwater based pollution from entering the stream; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone since the General/Detailed District Development Plan was approved prior to the regulation requiring a 100' stream buffer and the adjacent stream has been channelized into a paved ditch intended to be used for drainage; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land since the General/Detailed District Development Plan was approved prior to the regulation requiring a 100' stream buffer, the adjacent stream has been channelized into a paved ditch intended to be used for drainage, and any drainage and/or runoff from the proposed development would not flow into Bee Lick Creek; and

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow proposed structures and pavement to encroach a maximum of 55 feet into the stream buffer area.

The vote was as follows:

YES: Members Proffitt, Fishman, Tharp, Allendorf and Liggin.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Jarboe.

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14VARIANCE1012

Applicant/Owner: Obannon Station, LLC
Brian Thieneman
12488 LaGrange Road
Louisville, Kentucky 40245

Representative: Sabak, Wilson & Lingo, Inc.
Kelli Jones
608 S. Third Street
Louisville, Kentucky 40202

Project Name: Shops of Forest Springs, Phase III

Subject: An application for variances from the Land Development Code to allow to allow proposed buildings to exceed the maximum setback on Lots 4 (retail) and Lot 7 (bank).

Premises affected: On property known as 12911-13003 Factory Lane and being in Louisville Metro.

COUNCIL DISTRICT 17—Glen Stuckel
Staff Case Manager: David Wagner, Planner II

Appearances for Applicant:
Kelli Jones, 608 S. Third Street, Louisville, Kentucky 40202.

Appearances Interested Party:
No one.

Appearances Against Applicant:
No one.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning and Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

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NEW BUSINESS:

CASE NO. 14VARIANCE1012

On February 10, 2014, Obannon Station, LLC filed an application for a variation from the requirements of the Land Development Code to allow proposed buildings to exceed the maximum setback.

On April 7, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The recording of this hearing will be found on the DVD of the April 7, 2014 proceedings.

SUMMARY OF STAFF PRESENTATION:

Staff case manager, David Wagner gave a brief presentation of the case to the Board, which included a PowerPoint presentation. He said the request is a joint proposal with a Revised Detailed District Development Plan (14DEVPLAN1016) which was heard at the Development Review Committee (DRC) on April 2, 2014. He said a smaller bank is proposed for the newly created Lot 7 instead of a previously proposed retail building; a larger 20,676 SF retail building is proposed on Lot 4. He said the total building footprint will decrease from 27,375 SF to 24,855 SF. Mr. Wagner said landscaping and a berm will be provided.

SUMMARY OF TESTIMONY OF PROPONENTS:

Kelli Jones, the applicant's representative, said the Board approved a similar setback for Thornton's about a year ago. She said to mitigate the variance; the applicant is proposing a wider Landscape Buffer Area (LBA) along Factory Lane than is required by the LDC. She said the berm stops at one point for a manhole, but they will be planting shrubs there. Ms. Jones said they are following the existing pattern of development in the area.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

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SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition.

BUSINESS SESSION:

No discussion.

After the public hearing in open business session, on a motion by Member Allendorf, seconded by Member Fishman, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence including the applicant's justification, testimony and discussion at the public hearing that the applicant is requesting a variance from Table 5.3.2 of the Land Development Code to allow a proposed retail building on Lot 4 to be 365' from the front property line instead of the maximum 80' setback; and another variance from Table 5.3.2 of the LDC, to allow a proposed bank on Lot 7 to be 100' from the front property line instead of the 80' maximum; and

WHEREAS, the Board finds that the requested variances will not adversely affect the public health, safety or welfare because they will still be providing a majority of the berm along Factory Lane which will screen the parking in front of the building; and because a sidewalk connection is still being provided from the public sidewalk to all structures in the development to allow safe pedestrian circulation throughout the site; and

WHEREAS, the Board finds that the variances will not alter the essential character of the general vicinity because all commercial buildings along this frontage are either at or beyond the maximum setback; and because a single drive aisle with parking on both sides, and a 4' berm, the proposed bank building on Lot 7 must be set back as shown on the plan; and with regard to the strip center on Lot 4, is consistent with other retail centers in the direct vicinity; and because this center has been designed to have strip retail set back from the road with a series of outlots in front, just like the Kroger and the Shops Part II, except the outlot facades only make up 41% of the linear frontage, not the required 50%; and because this is partially due to the nature of the retail and partially due to the required detention area at the southeast corner of the site; and if the detention

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area were removed from the existing frontage, the 50% requirement would be met; and

WHEREAS, the Board finds that the variances will not cause a hazard or nuisance to the public because the intent of the regulations will still be met and a means for safe pedestrian and vehicular circulation is provided; and, in addition, by providing a wider landscape buffer along Factory Lane, more green space will be provided on site than is required; and

WHEREAS, the Board finds that the requested variances will not allow an unreasonable circumvention of the zoning regulations because other retail buildings in the area have similar setbacks; and because the applicant will be providing a 4' berm when a 3' screen is all that is required; a 24' buffer when a 10 or 15' buffer is all that is required; shrubs for screening where there is a break in the berm; and will provide a safe pedestrian connection from the public sidewalk to the principal structure; and

WHEREAS, the Board finds that the variances arise from special circumstances which do not generally apply to land in the general vicinity or the same zone because the southeast corner of the property is the ideal location for a required detention area for this project; and because it is the lowest point on this site and is away from the desirable areas on the rest of the surrounding retail; and because this means a portion of the frontage on Factory Lane is not developable; and the exceptions to the maximum setback rule allows buildings to be set back beyond the maximum setback if outlot buildings with facades making up 50% of the frontage are provided; and if it weren't for the detention area frontage this regulation would be met; and the location of the detention basin is a special circumstance that wouldn't generally apply to land in the general vicinity; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because the applicant would lose a significant number of prime parking spaces in order to provide the 15' landscaped area providing pedestrian access from the public sidewalk to the primary structure; and because it wouldn't be consistent with the surrounding retail uses or compatible with the intent of the existing approved development plan; and

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WHEREAS, the Board finds that the circumstances are not the result of actions by the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought because the natural grading of the site (location of the detention basin), the design requirements of the proposed tenant for Lot 7, and some existing utility conflicts in the area of the required berm;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variances.

The variances allow:

1. The proposed retail building on Lot 4 to be 365 feet from the front property line.
2. The proposed bank on Lot 7 to be 100 feet from the front property line.

The vote was as follows:

YES: Members Proffitt, Fishman, Tharp, Allendorf and Liggin.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Jarboe.

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14VARIANCE1023

Applicant: American Engineers
Matthew Allen
65 Aberdeen Drive
Glasgow, Kentucky 42141

Owner: Marshall Realty Company
Phillip Marshall, Jr.
P. O. Box 7066
Louisville, Kentucky 40257

Project Name: McDonald's Ormsby Station Road

Subject: An application for variances from the Land Development Code to allow parking and maneuvering; a dumpster and a small building to encroach into the required setbacks.

Premises affected: On property known as 9901 Ormsby Station Road and being in the City of Lyndon.

COUNCIL DISTRICT 18—Marilyn Parker
Staff Case Manager: David Wagner, Planner II

Appearances for Applicant:
Dwayne Clemons, 2500 Nelson Miller Parkway, Louisville, Kentucky 40223.

Appearances Interested Party:
No one.

Appearances Against Applicant:
No one.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning and Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

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On March 17, 2014, Matthew Allen filed an application for a variation from the requirements of the Land Development Code to allow parking and maneuvering; a dumpster and a small building to encroach into the required setbacks.

On April 7, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The recording of this hearing will be found on the DVD of the April 7, 2014 proceedings.

SUMMARY OF STAFF PRESENTATION:

Staff case manager, David Wagner gave a brief presentation of the case to the Board, which included a PowerPoint presentation. He said the request is a joint proposal that goes with a Revised Detailed District Development Plan (14DEVPLAN1007) which will be heard by the Land Development and Transportation Committee (LD&T) on May 8, 2014. He said the applicant wants to expand the existing McDonald's; a patio area and to create a dual drive-thru. He said additional parking spaces were added to meet the minimum parking requirement of 38 spaces. He said the requests will allow the site to come into compliance with current zoning regulations. Chair Proffitt said he feels two of the parking spaces on the plan are dangerous. Mr. Wagner said there was discussion about this and a possible need for a parking waiver, even though Public Works approved the plan.

SUMMARY OF TESTIMONY OF PROPONENTS:

Dwayne Clemmons, the applicant's representative, said most of the McDonald's around the country are expanding the restaurants and installing dual lane drive-thrus. Chair Proffitt questioned him about the two dangerous parking spaces. Mr. Clemmons agreed to work with staff on this.

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SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition.

BUSINESS SESSION:

The Board discussed the applicant modifying the plan; and felt it was best to continue this case

After the public hearing in open business session, on a motion by Member Fishman, seconded by Member Tharp, the following resolution was adopted:

RESOLVED, that the Board does hereby **CONTINUE** this case to **APRIL 21, 2014**, to allow the applicant more time to decide what to do about two of the parking spaces.

The vote was as follows:

YES: Members Proffitt, Fishman, Tharp, Allendorf and Liggin.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Jarboe.

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14VARIANCE1009

Applicant/Owner: JNO, LLC
Brian Humbert
7400 Preston Highway
Louisville, Kentucky 40219

Representative: Cardinal Planning & Design, Inc.
Kathryn Matheny
9009 Preston Highway
Louisville, Kentucky 40219

Project Name: The Mower Shop

Subject: An application for a variance from the Land Development Code to allow a proposed structure to encroach into the required rear yard and a landscape waiver.

Premises affected: On property known as 1137 Rachel Drive and being in Louisville Metro.

COUNCIL DISTRICT 13—Vicki Aubrey Welch
Staff Case Manager: Latondra Yates, Planner II

Appearances for Applicant:
Kathy Matheny, 9009 Preston Highway, Louisville, Kentucky 40219.

Appearances Interested Party:
No one.

Appearances Against Applicant:
No one.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning and Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

On February 7, 2014, JNO, LLC filed an application for a variation from the requirements of the Land Development Code to allow a proposed structure to

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encroach into the required 25-ft. rear yard; and a landscape waiver to not provide the required 25-ft. Landscape Buffer Area in the rear adjacent to R-5 zoned property.

On April 7, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The recording of this hearing will be found on the DVD of the April 7, 2014 proceedings.

SUMMARY OF STAFF PRESENTATION:

Staff case manager, Latondra Yates gave a brief presentation of the case to the Board, which included a PowerPoint presentation. She said the requests are related to a Category 2A review for demolition of two existing structures on the lot at the rear of the existing Mower Shop and the construction of 2,570 SF metal building addition for sale and repair of mower equipment.

SUMMARY OF TESTIMONY OF PROPONENTS:

Kathy Matheny, the applicant's representative, said they will be preserving one of the trees. She said there is no room for landscaping and the property doesn't get enough sunlight.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition.

BUSINESS SESSION:

Chair Proffitt said he will abstain since he gets his mowers worked on here. Member Allendorf said he would also abstain.

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VARIANCE:

After the public hearing in open business session, on a motion by Member Liggin, seconded by Member Fishman, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the applicant's justification; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Section 5.3.2.C.2.b. of the Land Development Code to allow a proposed structure to encroach into the required 25-ft. rear yard—or 10 feet from the north property line; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the proposed expansion will replace and update an existing building for the same use in the same approximate location; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the site is currently used for the same use as proposed; and because the addition will be an improvement over the existing building; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the expansion is proposed in the same area as the existing use and structure; and because it will not negatively impact the views from adjacent properties; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations given that it will allow the same use in approximately the same area; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity because the area is already developed; and because the applicant would like to upgrade an existing building and remove an older residence; and per the LDC requirements for setbacks, would not be relevant because the area is developed and one parcel which is zoned residential is not used as residential; and

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WHEREAS, the Board finds that the strict application of the provision of the regulation as to Suburban Marketplace Corridor setback would make this upgrade of an existing business impossible; and because all the landowner is doing is improving one portion of his business by replacing two old structures with one new one and improving parking areas and landscaping on this parcel; and

WHEREAS, the Board finds that the circumstances of this case are not the result of actions of the applicant taken subsequent to the adoption of the regulation; because the Mower Shop has been in operation for many years and needs to modernize;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow a proposed structure to be 10 feet from the north property line.

The vote was as follows:

YES: Members Fishman, Tharp and Liggin.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Jarboe.

ABSTAINING: Members Proffitt and Allendorf.

LANDSCAPE WAIVER:

After the public hearing in open business session, on a motion by Member Liggin, seconded by Member Fishman, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the applicant's justification, the evidence, testimony and discussion that the applicant is requesting a waiver from Section 10.2.4.B. of the Land Development Code to not provide the required 25-ft. Landscape Buffer Area (LBA) in the rear next to the R-5 zoned property; and

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WHEREAS, the Board finds that the requested landscape waiver will not adversely affect adjoining property owners because the property will continue to be used in the same manner in approximately the same location; and because the residential lot at the rear is not being residentially used and already has existing structures in this area; and

WHEREAS, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 because the residential lot at the rear is not being used as a residential use and backs up to a connector ramp at the rear of 4 buildings; and because the proposal is meeting the Tree Canopy requirements and has an extra 5 feet of Vehicular Use Area buffering in the front to make the site attractive from Rachel Drive; and

WHEREAS, the Board finds that the waiver is the minimum necessary to afford relief to the applicant since the use will be the same and will update the property and business; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because the proposed development would be an updated structure situated in approximately the same location for the same use;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the waiver to not provide the required 25-ft. LBA in the rear of the site adjacent to the R-5 zoned property.

The vote was as follows:

YES: Members Fishman, Tharp and Liggin.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING:

Member Jarboe.

ABSTAINING: Members Proffitt and Allendorf.

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APRIL 7, 2014

NEW BUSINESS:

CASE NO. 14VARIANCE1018

Applicant/Owner: River Glen Landis, LLC
Keith Eberenz
1300 Clear Springs Trace, Suite 9
Louisville, Kentucky 40223

Representative: Gary Dukes, PLS
Gary Dukes
3602 Briarglen Lane
Louisville, Kentucky 40220

Subject: An application for a variance from the Land Development Code to allow a proposed house to encroach into the required street side yard.

Premises affected: On property known as 15001 Timeless Lane and being in Louisville Metro.

COUNCIL DISTRICT 20—Stewart Benson
Staff Case Manager: Latondra Yates, Planner II

Appearances for Applicant:
Gary Dukes, 3602 Briarglen Lane, Louisville, Kentucky 40220.

Appearances Interested Party:
No one.

Appearances Against Applicant:
No one.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning and Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

On March 17, 2014, River Glen Landis, LLC filed an application for a variation from the requirements of the Land Development Code to allow a proposed house to encroach into the required street side yard.

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NEW BUSINESS:

CASE NO. 14VARIANCE1018

On April 7, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The recording of this hearing will be found on the DVD of the April 7, 2014 proceedings.

SUMMARY OF STAFF PRESENTATION:

Staff case manager, Latondra Yates gave a brief presentation of the case to the Board, which included a PowerPoint presentation. She said the variance is for the construction of a new single family house, approximately 2,937 SF. She said she received a call from a neighbor who lives across the street, who was not opposed once she explained the request. Ms. Yates said she supports the granting of the variance per the standard of review and staff analysis.

SUMMARY OF TESTIMONY OF PROPONENTS:

Gary Dukes, the applicant's representative, said he had nothing further to add.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition.

BUSINESS SESSION:

No discussion

After the public hearing in open business session, on a motion by Member Allendorf, seconded by Member Tharp, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the

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PowerPoint presentations; the applicant's justification; the evidence; testimony and discussion at the public hearing that the applicant is requesting a variance from Chapter 5.3.1 of the Land Development Code to allow a proposed new house to encroach into the required street side yard along Timeless Lane; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the proposed house appears to be situated in a manner that will not impede sight distance or negatively affect the view of neighboring properties; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because there are existing houses with similar setbacks in the neighborhood; and because there was at least one variance granted for the same encroachment on a corner lot within the subdivision; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the proposed house appears to be situated in a manner that will not impede sight distance or negatively affect the view of neighboring properties; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because there are other houses in the neighborhood with similar setbacks; and also because the majority of the street side setback will be observed; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity because of the lot size, configuration and 30 ft. building limit line; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship because the design of the house makes it necessary to face Fossil Creek Circle due to the topography of the lot;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow a proposed new house to be 23 feet from the street side property line along Timeless Lane.

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NEW BUSINESS:

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The vote was as follows:

YES: Members Proffitt, Fishman, Tharp, Allendorf and Liggin.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Jarboe.

ABSTAINING: No one.

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APRIL 7, 2014

NEW BUSINESS:

CASE NO. 14VARIANCE1017

Applicant/Owner: River Glen Landis, LLC
Keith Eberenz
1300 Clear Springs Trace, Suite 9
Louisville, Kentucky 40223

Representative: Gary Dukes, PLS
Gary Dukes
3602 Briarglen Lane
Louisville, Kentucky 40220

Subject: An application for a variance from the Land Development Code to allow a proposed structure (house) to encroach into the required street side yard along Glendower Drive.

Premises affected: On property known as 14018 Glendower Drive and being in Louisville Metro.

COUNCIL DISTRICT 20—Stuart Benson
Staff Case Manager: Sherie Long, Landscape Architect

Appearances for Applicant:
Gary Dukes, 3602 Briarglen Lane, Louisville, Kentucky 40220.

Appearances Interested Party:
No one.

Appearances Against Applicant:
No one.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning and Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

On March 17, 2014, River Glen Landis, LLC filed an application for a variation from the requirements of the Land Development Code to allow a proposed house to encroach into the required street side yard.

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NEW BUSINESS:

CASE NO. 14VARIANCE1017

On April 7, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The recording of this hearing will be found on the DVD of the April 7, 2014 proceedings.

SUMMARY OF STAFF PRESENTATION:

Staff case manager, Sherie Long gave a brief presentation of the case to the Board, which included a PowerPoint presentation. She said the variance is for the construction of a new home on a vacant lot using infill standards. Ms. Long said due to the lot size and configuration, the proposed design of the house makes it necessary to face Fossil Creek Circle with the driveway and garage facing Glendower. She said the site is surrounded by single family residences and will be compatible with the area. Member Allendorf said hopefully they will put the address on the side of the house for EMS/Fire purposes.

SUMMARY OF TESTIMONY OF PROPONENTS:

Gary Dukes said it didn't have anything further to add.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition.

BUSINESS SESSION:

No discussion.

After the public hearing in open business session, on a motion by Member Allendorf, seconded by Member Fishman, the following resolution was adopted:

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NEW BUSINESS:

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WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the applicant's justification; the evidence; testimony and discussion at the public hearing that the applicant is requesting a variance from the Land Development Code, Table 5.3.1, to allow a propose new house to encroach into the required street side yard along Glendower Drive; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the proposed structure will be situated in a manner that will not hinder or impede sight distance; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the structure will be compatible with the architecture throughout the neighborhood; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the encroachment will not create a problem for motorists or pedestrians; and because the encroachment will not be noticeable to the street side view when considering this is the first lot in the subdivision; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the structure will still be 25 feet from the property line and the encroachment is a small portion of the required street side yard; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not apply to land in the general vicinity because of the lot size, configuration and 30 foot building line; and

WHEREAS, the Board finds that the strict application of the provision of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because the design of the house makes it necessary to face Fossil Creek Circle with the driveway coming in from Glendower Drive;

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CASE NO. 14VARIANCE1017

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow a proposed new house to be 25 feet from the street side yard along Glendower Drive.

The vote was as follows:

YES: Members Proffitt, Fishman, Tharp, Allendorf and Liggin.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Jarboe.

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14VARIANCE1024

Applicant/Owner: Sarasota Properties, LLC
Robert Buckler
P.O. Box 7781
Louisville, Kentucky 40257

Representative: Schroll Land Surveying
Bill Schroll
5450 Southside Drive
Louisville, Kentucky 40214

Subject: An application for a variance from the Land Development Code to allow a proposed structure to encroach into the side and street side yard setbacks using infill standards.

Premises affected: On property known as 8901 Wilson Avenue and being in the City of Lyndon.

COUNCIL DISTRICT 7—Ken Fleming
Staff Case Manager: Jessica Butler, Planner I

Appearances for Applicant:
Robert Buckler, P.O. Box 7781, Louisville, Kentucky 40257.

Appearances Interested Party:
No one.

Appearances Against Applicant:
No one.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning and Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

On March 17, 2014, Robert Buckler filed an application for a variation from the requirements of the Land Development Code to allow a proposed structure to encroach into the side and street side yard setbacks using infill standards.

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NEW BUSINESS:

CASE NO. 14VARIANCE1024

On April 7, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The recording of this hearing will be found on the DVD of the April 7, 2014 proceedings.

SUMMARY OF STAFF PRESENTATION:

Staff case manager, Jessica Butler gave a brief presentation of the case to the Board, which included a PowerPoint presentation. She said the applicant needs the variance using infill standards for the construction of a new residence on a vacant lot. She said the property is in the City of Lyndon and reviewed against the 2006 Land Development Code. Ms. Butler said the site is a small corner lot; and that the request complies with the regulations.

SUMMARY OF TESTIMONY OF PROPONENTS:

Robert Buckler, the applicant, was sworn in. Chair Proffitt said it looks like there's a separation on the property. Mr. Buckler said no the aerial photograph is wrong. Member Fishman said she would like to see what the house will look like. Mr. Buckler submitted a rendering into the record; and said he's built several similar style homes in the area and will be compatible with the area.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition.

BUSINESS SESSION:

No discussion.

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NEW BUSINESS:

CASE NO. 14VARIANCE1024

After the public hearing in open business session, on a motion by Member Fishman, seconded by Member Liggin, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the applicant's justification; the evidence; testimony and discussion at the public hearing that the applicant is requesting a variance from the 2006 Land Development Code , Section 5.3.1.C.1 to allow a proposed structure (new home) to encroach into the side and street side yard setbacks using infill standards; and

WHEREAS, the Board finds that the requested variances will not adversely affect the public health, safety or welfare because the neighborhood is currently built with similar setback reductions and similar designs; and because the structure will not inhibit visibility at the triangular corner; and

WHEREAS, the Board finds that the variances will not alter the essential character of the general vicinity because the lots are small and the proposed home will be placed with a proper front yard setback; and

WHEREAS, the Board finds that the variances will not cause a hazard or nuisance to the public because the proposed structure will be out of the sight triangle on this corner lot and will be built to the general scale of other homes in the neighborhood; and

WHEREAS, the Board finds that the variances will not allow an unreasonable circumvention of the zoning regulations because the lot sizes are small and most new construction would need a variance or waiver; and

WHEREAS, the Board finds that the variances arise from special circumstances which do not generally apply to land in the general vicinity because the proposed structure is to be built on a corner lot, which creates multiple special circumstances; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because the design of any proposed house would only allow for a 21' width, where the

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APRIL 7, 2014

NEW BUSINESS:

CASE NO. 14VARIANCE1024

variance will allow a 30' building width, allowing for a more accommodating home;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variances.

The variances allow:

1. The proposed structure to be 5 feet from the Northeast side property line.
2. The proposed structure to be 11 feet from the Military Avenue street side property line.

The vote was as follows:

YES: Members Proffitt, Fishman, Tharp, Allendorf and Liggin.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Jarboe.

ABSTAINING: No one.

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

APRIL 7, 2014

NEW BUSINESS:

CASE NO. 14APPEAL1002

Appellant: Russell & Harriet Patrick
122 N. 42nd Street
Louisville, Kentucky 40212

Subject: An Appeal of a determination issued by the Department of Codes and Regulations concerning non-conforming use right for a multi-family structure with 3 units.

Premises affected: On property known as 2123 Grand Avenue and being in Louisville Metro.

COUNCIL DISTRICT 6—David James
Staff Case Manager: Steve Hendrix, Planning Supervisor

Appearances Opposing the Appeal:
Joseph Debow, 2116 Grand Avenue, Louisville, Kentucky 40210.

Phyllis Smith, 2128 Grand Avenue, Louisville, Kentucky 40210.

Appearances Interested Party:
No one.

Appearances in Support of the Appeal:
Russell & Harriet Patrick, 122 N. 42nd Street, Louisville, Kentucky 40212.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning & Design Services, located at 444 South Fifth Street, Louisville, Kentucky.

A determination letter was issued by the Department of Codes and Regulations concerning non-conforming use rights for 3 apartments was sent to the owner of the subject property. The owners and appellant filed an appeal of this action on February 21, 2014.

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NEW BUSINESS:

CASE NO. 14APPEAL1002

On April 7, 2014, at a meeting of the Board, a hearing was held on the case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The recording of this hearing will be found on the DVD of the April 7, 2014 proceedings.

SUMMARY OF STAFF PRESENTATION:

Staff case manager, Steve Hendrix gave a brief presentation of the case to the Board, which included a PowerPoint presentation. He said the subject structure was built in 1910 and now contains three separate dwelling units. Since the property is within the former city, June 16, 1971 would be the year used to determine if non-conforming rights exist since zoning mistakenly didn't exist in the city this date. Mr. Hendrix said the Caron's directory lists only one family name from 1971 to 1991, but subsequent entries note earlier years of occupancy. The Property Valuation Administration (PVA) lists the property as a single family dwelling; and is zoned R-5, Residential Single Family. Mr. Hendrix said he received numerous affidavits that explain that separate dwelling units did exist and were being rented since the 60's and 70's.

SUMMARY OF TESTIMONY OF OPPONENTS:

Joseph Debow said his parents purchased the home he currently lives in the 60's, when he was just 13. He said he only knew of one lady that lived in the subject home for many years; and the neighborhood was quiet and peaceful. He said the property was auctioned at a very low price; and now has 3 apartment units. He said he has to wait till someone moves to park on the street; and that people even block the street so no one can get through. Mr. Debow said they have 10-20 people in the yard during the holidays; and the neighborhood has become unruly. Mr. Debow said the new owner offered him \$50.00 to sign an affidavit that the property has had 3 units since the 60's or 70's.

Phyllis Smith she has lived in her house for 32 years; and that the previous owner, Mrs. Bush, invited her into her home where she noticed stairs going up to

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the second floor. Ms. Smith said parking is bad and that she has a handicapped parking space that the tenants use unlawfully.

One of the Board members questioned why Mr. Debow's brother signed an affidavit stating that the house was used as a rental property. Mr. Debow said his brother is not in good terms with the family; and hasn't lived in this house since the 70's.

Chair Proffitt asked Ms. Smith about all the other affidavits stating that the property has been used for rental units. Ms. Smith said she has only seen one older woman live there and that her daughter's would come and visit on Sunday's. Member Liggin asked Ms. Smith if the appellant asked her to sign an affidavit for \$50.00. Ms. Smith said no. Ms. Smith concluded that the neighborhood has become unpleasant to live in with not enough parking; and people throwing trash into her yard.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF APPELLANT(S):

Harriet Patrick, the owner of the property, said there are only two cars from people that rent from her. She said she canvassed the neighborhood to get information, but never offered anyone any money. Chair Proffitt asked why there are only two meters since there are three apartment units. Ms. Patrick said there used to be radiator heaters and she upgraded the heating and air and is when LG&E added the second meter. She said LG&E wouldn't give her any information prior to her purchasing the property to verify three separate dwelling units. She said the property was auctioned as "Income Potential". The Board asked many questions regarding access to the three apartments. Ms. Patrick said she bought it as is, with separate access to each apartment. Member Tharp asked how she came in contact with Mr. Debow's brother to sign the affidavit. Ms. Patrick said she thought he lived with his brother and was on their porch.

Russell Patrick said everything his wife has said is true. Member Liggin asked if the property has always been insured as commercial. Mr. Patrick said no, but after they bought it, insured it as commercial. Mr. Patrick said they've made the house look nice by installing new windows and doors; and said they even pick up trash in the area. Mr. Patrick said he thinks Mr. Debow has got the wrong house

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from where trouble has arisen. He said that he has COPD and his wife has Lupus, and they need to sell the property for these health reasons. Ms. Fishman asked Ms. Patrick about gathering information from LG&E. Ms. Patrick submitted a letter from LG&E into the record. Chair Proffitt said the letter is just a transfer of service. Member Fishman asked again if they could get records from LG&E. Mr. Hendrix interjected and said they won't even give Planning & Design records of this type.

REBUTTAL:

Mr. Debow said the people that live at the subject property have a lot of company with numerous cars.

BUSINESS SESSION:

Member Allendorf said there are 7 affidavits stating that the property was used as multi-family residential back to the 60's and 70's; but two people here say it has not. He said the stairs to the upper unit look relatively old. He said the Louisville Fire Department wouldn't have any records. He said he realizes there are contract issues, but was auctioned as an "income potential" property so feels it is multi-family residential.

Member Tharp said there was only one gas meter until the appellant's bought the property from auction; and realize they've made some improvements to the property adding new HVAC; new windows and doors, but still feels it's a single family home.

Member Fishman said the people that signed the affidavits stated that they used to rent out rooms in the house, but the appellant doesn't have any information to prove this. She said the owners also pay for the heat and electric, so there wouldn't be any separate bills for proof. She said she understands they bought this at auction assuming it was multi-family residential; and the only proof the Board could rely on is the affidavits.

Member Liggin said a lot of people rented out rooms in large homes to help pay bills. He said he believes it was sold to the owners as apartments; and also knows that the opposition wants the home back to single family.

Chair Proffitt said he could believe both sides considering the affidavits and testimony. He said the only thing he feels the Board can rely on is the

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information in the Caron's Directory. He said the appellant's need to produce more concrete evidence such as a cancelled check from a tenant or anything else that might persuade him otherwise.

Jon Baker, the Board's legal counsel, said it is the appellant's job to prove that the property has been used as multi-family residential since 1971; and according to the Board, haven't produced enough evidence. He said information in the Caron's Directory is based on voluntary information; and suggested giving the appellant more time to gather more information. Chair Proffitt said they could get previous renters to testify and the Bush family.

BACK INTO PUBLIC HEARING:

Chair Proffitt asked Ms. Patrick if it would give her enough time if they continued to May 19, 2014. Ms. Patrick said the Bush family has died off; and this is all they can do. Chair Proffitt said they should make an attempt.

BACK INTO BUSINESS SESSION:

After the public hearing in open business session, Member Liggin made a motion to approve the appeal, establishing non-conforming use rights for a three-plex based on information in the affidavits; and was seconded by Member Fishman.

The vote was as follows:

YES: Members Fishman, and Liggin.

NO: Members Proffitt and Tharp.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Jarboe.

ABSTAINING: Member Allendorf.

The motion died for lack of majority.

DISCUSSION:

Member Liggin feels they've done their due diligence. One of the affidavits states that someone rented there in 1965 and in the 80's. Chair Proffitt said he still feels there is not enough information to make a proper decision. Member Liggin said it was sold to the owners' as multi-family and is unfair if the Board votes otherwise. Chair Proffitt said they have to go by the law; and reiterated that the Caron's Directory is really the only thing they have to rely on.

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After the discussion, Member Liggin made a motion to approve the appeal, establishing non-conforming use rights for 3 apartments based on the affidavits and testimony; and was seconded by Member Fishman.

The vote was as follows:

YES: Members Fishman, and Liggin.

NO: Members Proffitt, Allendorf and Tharp.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Jarboe.

ABSTAINING: No one.

DISCUSSION:

Chair Proffitt said they could now either make a motion to deny or continue the case.

After the discussion, in open business session, on a motion by Member Fishman, seconded by Member Liggin the following resolution was adopted:

RESOLVED, the Board does hereby **CONTINUE** Case No. 14APPEAL1002 to **JUNE 2, 2014**, to allow the appellant more time to obtain more concrete evidence to support approving the appeal. The appellant shall also submit this information to staff by May 19, 2014.

The vote was as follows:

YES: Members Proffitt, Fishman, Tharp, Allendorf and Liggin.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Jarboe.

ABSTAINING: No one.

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The meeting adjourned at 12:25 p.m.

CHAIRPERSON

SECRETARY